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No. 483

In the

Supreme Court of the United States

OCTOBER TERM, 1969

ATLANTIC RICHFIELD COMPANY, *et al.*,
Petitioners,

v.

W. O. HILTON, *et al.*,
Respondents.

APPENDIX TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

Proceedings On Hearing On Motion To Remand In U. S. District Court, And Designated By W. O. Hilton et al As Part Of The Record For Appeal To U. S. 5th Circuit Court.

(U. S. 5th Circuit Court Record, Volume 1, Page 106)

TYLER, TEXAS

JUNE 26, 1962

REPORTER'S NOTE: The Court opened at 9:30 o'clock, a.m., June 26, 1962.

THE COURT: Civil Action No. 2962: W. O. Hilton and others versus Atlantic Refining Company, a corporation.

Is the Plaintiff ready to proceed on their Motion to Remand?

MR. MOORE: Yes. Yes; the Plaintiff is ready, Your Honor.

THE COURT: Is the Defendant ready?

MR. RAMEY, SR.: Yes, Your Honor.

THE COURT: All right.

* * * * *

MR. MOORE: Would you mark that, please?

(DECLARATION OF UNIT — filed by Atlantic Refining Company in Deed Records of Henderson County, Texas, as recorded in Book 498, Page 389 — re Melton Oil Unit, was duly marked as:

PLAINTIFFS' EXHIBIT NO. 1)

MR. MOORE: Your Honor, Plaintiff first offers in evidence —

THE COURT: (interrupting) Exhibit it to opposing counsel.

REPORTER'S NOTE: An instrument was handed to Counsel for the Defendant.

MR. MOORE: (continuing) — the Declaration of Unit heretofore filed by the Atlantic Refining Company in the Deed Records of Henderson County, Texas — recorded in Book 498, Page 389 — styled: "The Melton Unit".

(pause)

Your Honor, this offer into evidence is made for the limited purpose of showing the claims asserted to Atlantic and not for proof of admitting the validity of anything in it.

REPORTER'S NOTE: An instrument was handed to the Court.

(pause)

(DIVISION ORDER: of Atlantic Refining Company — addressed to The Atlantic Refining Company, P. O. Box 2819, Dallas, Texas, re ATLANTIC — Melton Oil Unit #43340-51711 Lease, in the Fairway James Lime Field; under cover letter from The Atlantic Refining Company, dated September 22, 1961, and addressed to "ALL INTEREST OWNERS", was duly marked as:

PLAINTIFFS' EXHIBIT NO. 2)

REPORTER'S NOTE: An instrument was handed to Counsel for the Defendant.

(pause)

MR. MOORE: Your Honor, Plaintiff —

THE COURT: (interrupting) Pass it to the Clerk.

MR. MOORE: We next offer into evidence a Unit Division Order, prepared by the Atlantic Refining Company on the Melton Unit, for the purpose of showing the claims asserted and admitted by the Defendant therein; but for that limited purpose and not for the purpose of proving the truth of any of the claims therein shown.

REPORTER'S NOTE: An instrument was handed to the Court.

(DESIGNATION OF UNIT — executed on the 22nd day of January, 1962, effective as of October 1, 1961, by Cities Service Petroleum Company and The Atlantic Refining Company, was duly marked as:

PLAINTIFFS' EXHIBIT NO. 3)

REPORTER'S NOTE: An instrument was handed to Counsel for the Defendant.

(pause)

* * * * *

THE COURT: Does it cover the same land covered by the —

MR. RAMEY, SR.: (interrupting) Well, it covers a — a fraction of the land which is covered by the Atlantic Lease which is in dispute in this case; about two or three acres off of the south end of the — of it — of the tract which is under lease to the Atlantic. And this is a unitization agreement which is — which incorporates that fractional amount of acreage with some other adjacent acreage which is owned by the Cities Service Oil Company.

(DIVISION ORDER — of Atlantic Refining Company — addressed to The Atlantic Refining Company, P. O. Box 2819, Dallas, Texas, re CITIES SERVICE PETROLEUM COMPANY—Emerson Unit #43340-33751 Lease, in the Fairway (James Lime) Field; under cover letter from The Atlantic

Refining Company, dated June 1, 1962, and addressed to "ALL INTEREST OWNERS", was duly marked as:

PLAINTIFFS' EXHIBIT NO. 4)

REPORTER'S NOTE: An instrument was handed to Counsel for the Defendant.

(pause)

* * * * *

MR. MOORE: All right, sir.

Your Honor, we would next like to offer Defendant's Original Answer in evidence for the purpose of showing that the land described in our Petition is the same land described in the Declaration of Unit which they admit; if that's —

THE COURT: (interrupting) Well, you don't have to introduce it in evidence.

MR. MOORE: All right, sir.

THE COURT: That's an admission. You don't have to introduce that in evidence.

MR. MOORE: All right, sir; that's all we have, then, Your Honor.

THE COURT: All right; does the Defendant have anything?

MR. RAMEY, SR.: Yes, Your Honor.

I think it would be appropriate if Your Honor would — were advised what is the genesis of this lawsuit; and, therefore, I would like to call Mr. Daugherty, who is a surveyor, to just identify a plat which was made pursuant to his survey on the ground and which reflects the land in this unit which is under attack.

THE COURT: All right.

* * * * *

H. J. DAUGHERTY,

having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, did testify as follows:

DIRECT EXAMINATION

BY MR. RAMEY, SR.:

"Q. Mr. Daugherty, what are your initials?

"A. Pardon?

"Q. What is your name?

"A. H. J. Daugherty.

"Q. Where do you live, Mr. Daugherty?

"A. My home is in Marshall, Texas.

"Q. By whom are you employed?

"A. Atlantic Refining Company.

"Q. In what capacity?

"A. As a surveyor.

* * * * *

"Q. Mr. Daugherty, this suit concerns the — what is known as the Melton Unit in the Alfred Benge Survey in Henderson County, Texas — composed of the Melton eighty — so-called eighty-acre tract and the Hilton-McCoy eighty-acre tract.

Have you had occasion to survey those tracts?

"A. Yes, sir.

"Q. When did you survey them?

"A. In February, 1961 — last year.

* * * * *

BY MR. RAMEY, SR.:

"Q. Mr. Daugherty, there is exhibited before you a plat, which has been designated by the Clerk as Defendant's Exhibit 1. I will ask you whether or not that plat correctly reflects the — your survey of the Melton Unit?

"A. It does.

"Q. Did you go on the ground — actually on the ground to survey that land which is exhibited by the map?

"A. I did.

* * * * *

"Q. Which tract is the Melton tract?

"A. The westerly tract is the Melton tract.

"Q. Was it supposed to — I mean, did it call for in the field notes to contain eighty acres?

"A. Yes, sir; it does.

"Q. Was — Did you survey around the so-called Hilton tract — the Hilton and McCoy tract (indicating)?

"A. I did.

"Q. Was — Did you find from the field notes that it called for eighty acres?

"A. Yes, sir; I did.

* * * * *

MR. RAMEY, SR.: We offer the deed from W. A. Hogue and wife to W. O. Hilton and L. A. McCoy, dated November the 5th, 1942; recorded in Volume two five three, page two three four — deed records of Henderson County, Texas — which we have a copy of.

This is on page one twelve of the abstract of title prepared by Richardson-Watkins Abstract Company — No. 14,990.

* * * * *

(DEED — from W. A. Hogue and wife to W. O. Hilton and L. A. McCoy, dated 5 November, 1942, filed November 18, 1942, and recorded in Volume 253, page 234, Deed Records, Henderson County, Texas, was duly marked as: DEFENDANT'S EXHIBIT NO. 2)

* * * * *

MR. RAMEY, SR.: We next offer in evidence the deed — I mean the oil, gas and mineral lease from W. O. Hilton, and wife Malvirin Hilton, and L. A. McCoy, and wife Illa Mae McCoy, to B. L. Garrett, dated the 5th day of August, 1951 — which is recorded in Volume 373, Page 255.

(OIL, GAS AND MINERAL LEASE — from W. O. Hilton and wife and L. A. McCoy and wife to B. L. Garrett, dated August 5, 1951, filed August 25, 1951, and recorded in Volume 373, Page 255, Deed Records of Henderson County, Texas, was duly marked as: DEFENDANT'S EXHIBIT NO. 8)

* * * *

The Court: I assume it provides the lessee can cut up a unit by filing a Declaration of Unitization.

MR. RAMEY, SR: Yes, it does, Your Honor. And it also provides that the units pooled for oil hereunder — well, it reads: (reading)

"Units pooled for oil hereunder shall not substantially exceed forty acres * * *

provided that should Governmental authority having jurisdiction prescribed or permit the creation of units larger than those specified, units thereafter created may conform substantially in size with those prescribed by Govermental regulations."

And we are prepared to show that the Railroad Commission of Texas prescribed eighty acres in this field as a minimum and one hundred and sixty acres as a maximum in size as units for oil.

We next offer into evidence assignments of this particular lease, which was executed by the Plaintiffs to B. L. Garrett — from B. L. Garrett to E. C. Casey — which is shown on Page 153 of the abstract.

(ASSIGNMENT — from B. L. Garrett to E. C. Casey, dated August 6, 1951, filed on Aug. 25, 1951, and recorded in Volume 320, Page 481 of Deed Records of Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 9)

MR. RAMEY, SR: And also an assignment from E. C. Casey to Atlantic Refining Company of the same lease, which is shown on Page 153 of the abstract.

(ASSIGNMENT — from E. C. Casey to Atlantic Refining Company, dated August 7, 1951, and recorded in Volume 373, Page 260 of Deed Records of Henderson County, Texas — filed on August 25, 1951, was duly marked as:

DEFENDANT'S EXHIBIT NO. 10)

MR. RAMEY, SR: Both of those assignments are dated — one of them is — the first one is dated the 6th day of August of '51 and the second one is dated the 7th day of August of '51.

* * * * *

We next offer in evidence, if the Court please, the Declaration of Unitization.

THE COURT: That's already been offered; hasn't it?

MR. RAMEY, SR: Has it?

MR. MOORE: Yes, we offered it.

THE COURT: The Plaintiff offered the Declaration of Unitization as its Exhibit No. 1.

MR. RAMEY, SR: Well, fine.

THE COURT: For a limited purpose.

Now, if you want to offer it for additional —

MR. RAMEY, SR: (interruption) We offer it generally.

THE COURT: Well, that will be Plaintiff's Exhibit No. 1, then. There is no use putting them back in here then.

All right; are you through with this witness?

MR. RAMEY, SR: I think so — at this time; as far as I'm concerned.

MR. MOORE: Your Honor, I want to ask him one or two questions.

THE COURT: Well, we will take about a ten-minute recess.

MR. MOORE: All right; fine.

REPORTER'S NOTE: The Court then, at 11:20 o'clock, a.m., June 26, 1962, recessed until 11:30 o'clock, a.m., the same date, at which time it reconvened.

DIRECT EXAMINATION

(continued)

BY MR. RAMEY, SR:

"Q. Mr. Daugherty, do you know whether or not an oil well has been drilled and completed on either one of these eighty-acre tracts that you have been testifying about?

"A. Yes, sir; I do.

"Q. Who drilled it?

"A. Pardon?

"Q. I mean, at whose instance was the well drilled?

"A. The Atlantic Refining Company.

"Q. Where is that well located?

"A. It's located in the northeast part of the west eighty acres on Mr. Melton's land.

"Q. Is this spot (indicating) here on the map, which we will indicate at "K" —

REPORTER'S NOTE: Counsel for the Defendant marked on instrument.

"Q. (continuing) — dot "K" there — is that the location of this well?

"A. Yes, sir; that's it.

"Q. Is it a producing well?

"A. It is.

"Q. Do you know about when the well was drilled — commenced?

"A. Some time this past year. I imagine during the summer of 1961. Somewhere in that neighborhood.

"Q. Is that well located in an area which is known as an oil producing area?

"A. I didn't quite get your question.

"Q. Is that well located in an area which is known as an oil producing area?

"A. Yes, sir; it is.

"Q. By what name is that area known and designated?

"A. That's ordinarily known as the "Fairway Field".

"Q. Do you know whether or not there are other producing wells — oil wells in that vicinity?

"A. Yes, sir; I do.

"Q. Do you know whether or not there are wells — producing oil wells to the north?

"A. There are some producing oil wells surrounding the tract.

"Q. Surrounding the tract.

All — In every direction?

"A. North, south, east and west — to the best of my knowledge; I'm sure it is that way.

"Q. Have you been on the ground and seen those wells?

"A. Well, some of them were drilled subsequent to my having been on the ground for this survey; but it's — all that area is drilled-up.

MR. RAMEY, SR: We next offer in evidence a — a regulation promulgated by the Railroad Commission of Texas, effective July 1, 1961, pertaining to the Fairway Field, if the Court please; referring to the proration units provided for in the Fairway Field rules for an eighty-acre proration plus and eigthy-acre tolerance for each well.

THE COURT: In other words, it permits units up to a hundred and sixty acres.

MR. RAMEY, SR: Yes.

(LETTER — From Railroad Commission of Texas, Oil and Gas Division, dated June 12, 1961, was duly marked as:

DEFENDANT'S EXHIBIT NO. 13)

MR. RAMEY, SR: And this also is a certified copy of the order of the Railroad Commission upon which that communication is predicated.

(SPECIAL ORDER — of Railroad Commission of Texas, Oil and Gas Division — adopting temporary rules and regulations for the Fairway (James Lime) Field, Anderson & Henderson Counties, Texas, dated March 14, 1961, being Oil and Gas Docket No. 120, #6-45,322, was duly marked as:

DEFENDANT'S EXHIBIT NO. 14)

MR. RAMEY, SR: This is — The document to which I have last referred — Exhibit 14 — which is headed "Railroad Commission of Texas, Oil and Gas Division — "Oil and Gas Docket No. * * *" so-and-so "Re: Conservation and prevention of waste of crude petroleum and natural gas in the Fairway (James Lime) Field, Anderson and Henderson Counties, Texas."

And we call your attention to this provision therein contained — that: (reading)

"The acreage assigned to the individual oil well * * *"

Now I'm reading Rule 2: (reading continued)

"* * * for the purpose of allocating allowable oil production thereto shall be known as a proration unit. No proration unit shall consist of more than eighty acres except as hereinafter provided * * *"

and so forth.

And then it says: (reading)

> "Provided, however, that operators may elect to assign tolerance of not more than eighty acres of additional unassigned lease acreage to a well on an eighty-acre unit and shall in such event receive allowable credit for not more than one hundred and sixty acres."

Now, Your Honor, inasmuch as Plaintiffs have designated certain individuals that they claim should be made parties to this action as indispensable parties, we would like to at this time offer the royalty deeds under which those individuals hold — all of which are non-participating royalty deeds — which we contend conveys no right, title and interest into the oil and gas in and under the land at all, but is merely an assignment of personal property as, if and when it is produced — save (phonetic) and sold from the land.

THE COURT: Well, let's finish with this witness first. They said they wanted to cross-examine him.

MR. RAMEY, SR: Well —

THE COURT: They have the right to cross-examine the witness while —

MR. RAMEY, SR.: (interrupting) Yes, sir.

THE COURT: All right; go ahead.

MR. RAMEY, SR: I'm sorry, Your Honor, I was just trying to get the data before the Court while he was on the stand.

CROSS-EXAMINATION

BY MR. MOORE:

* * * * *

> "Q. Now, your point "A" here (indicating) calls to begin at the northwest corner of the John P. Miller three hundred acre survey.
>
> "A. That's right.

"Q. Where is the John P. Miller three hundred acre survey?

"A. The John P. Miller three hundred acre survey is very indefinitely described.

"Q. Have you read the deed of the John P. Miller three hundred acre survey?

"A. Some time back.

"Q. Doesn't it in truth and in fact lie in the northeast corner of the Alfred Benge League?

A. I didn't understand you.

"Q. Doesn't the John P. Miller three hundred acre survey in fact lie in the northeast corner of the Alfred Benge League?

"A. No; not that I know of. I think the description is rather indefinite — as I remember it. You might read it to me — or let me see.

(DEED — from J. N. Dean to John Miller, January 29, 1859, filed for record on January 17, 1860, Henderson County, Texas, was duly marked as:

PLAINTIFF'S EXHIBIT NO. 5)

REPORTER'S NOTE: An instrument was handed to Counsel for the Defendant.

(pause)

MR. RAMEY, SR: I'm not sure, Your Honor, from this description that it applies to any of the land in controversy. It doesn't identify any of the land; it doesn't even refer to a specific number of acres; and it's just a quick-claim deed.

THE COURT: What is the instrument? Pass it up, please.

REPORTER'S NOTE: An instrument was handed to the Court.

(pause)

THE COURT: What is the materiality of this, Mr. Moore?

MR. MOORE: Sir?

THE COURT: What is the materiality of this?

MR. MOORE: The materiality of it is, Your Honor, that all of their deeds refer back to a deed calling for the — to begin at the northwest corner of the John P. Miller three hundred acre survey. And that is the John P. Miller three hundred acre survey — and it lies two or three miles east of the land in controversy.

That is the defect in their lawsuit.

THE COURT: Overrule your objection.

* * * * *

MR. RAMEY, SR.: That's all for this witness.

THE COURT: Do you have any further questions of this witness, Mr. Moore?

MR. MOORE: No, sir.

THE COURT: All right; you may step down.

THE WITNESS: Thank you.

MR. RAMEY, SR.: We now offer some royalty deeds, all of which are — we submit, are non-participating royalty deeds to — in favor of parties who Plaintiffs have designated in their Motion to Remand are indispensable parties to this litigation.

(ROYALTY DEED — from W. O. Hilton and wife, Malvrin Hilton and L. A. McCoy and wife, Ila Moe McCoy, to H. P. Riley, dated April 1, 1961, filed for record on April 5, 1961, Henderson County, Texas — recorded in Volume 494, Page 259 of Deed Records, was duly marked as:

DEFENDANT'S EXHIBIT NO. 21)

(ROYALTY DEED — from W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, to H. P. Riley, dated April, 1961, filed on April 27, 1961, and recorded in Volume 495, Page 190, Deed Records of Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 22)

(ROYALTY DEED — from W. O. Hilton and wife, Malvrin Hilton, to H. P. Riley, dated May 6, 1961, filed on May 8, 1961, and recorded in Volume 495, Page 417, Deed Records in Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 23)

MR. RAMEY, SR.: The first is a —

(pause)

— is an instrument executed by W. O. Hilton and wife and L. A. McCoy and wife in favor of H. P. Riley, which purports to convey and assign: (reading)

> "* * * an undivided five acre interest in and to all of the oil royalty, gas royalty, and royalty in casinghead gas, gasoline, and royalty in other minerals in and under, and that may be produced * * *"

from the land in controversy.

(pause)

Which is described as: (reading)

"BEGINNING at the Northeast corner of an eighty acre tract * * * bought by J. M. Curry from Frank Guiher * * *"

And this is Defendant's Exhibit 21.

* * * * *

MR. RAMEY, SR.: Next we introduce Defendant's Exhibit 22, which is signed by Hilton and wife, and H. P. Riley — W. O. Hilton and wife and H. P. Riley — which purports to convey: (reading)

"* * * an undivided five acre interest in and to * * *",

in the — in the royalty — and contains a recitation that: (reading)

"This deed is a correction deed and it is in lieu of and substitution of that certain royalty deed from W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy * * * to H. P. Riley, as Grantee, dated April 1, 1961, and recorded in Volume 494, page 259 * * *"

which is the instrument — Defendant's Exhibit 21 — (reading continued)

"* * * and the Grantee joins in the execution hereof to evidence his acceptance of this deed in correction of and in lieu of and substitution of said above mentioned Royalty Deed."

* * * * *

(ROYALTY DEED—from W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, to Elise M. Young, dated June 19, 1961, filed for record on June 21, 1961, and recorded in Volume 497, Page 558, Deed Records, Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 24)

(ROYALTY DEED—from W. O. Hilton and wife, Malvrin Hilton, and L. A. McCoy and wife, Ila Mae McCoy, to James A. Latham, dated September 7, 1961, and filed for record on September 19, 1961, and recorded in Volume 503, page 157, of the Deed Records of Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 25)

MR. RAMEY, SR.: And we also offer at this point — (pause) — the royalty deeds executed and acknowledged by W. O. Hilton and wife and Ila Mae — I mean — L. A. McCoy and wife, dated June 19, 1961. That is Defendant's Exhibit 19 — I mean — 24 — and Defendant's Exhibit 25, executed the 7th day of May, 1961 — executed by both W. O. Hilton and wife and L. A. McCoy and wife — and executed — Exhibit "D-24" being executed in favor of Elise M. Young, which describes the land as: (reading)

"BEGINNING at the N. W. corner * * *"

both of which deeds describe the land as: (reading)

"BEGINNING at the N. W. corner of an eighty acre tract * * * heretofore bought by J. M. Curry from Frank Guiher * * *"

And it — they also contain the provisions that: (reading)

"Said lands or portions thereof, being now under oil and gas lease executed in favor of any valid leaseholder of record * * *"

And they — these instruments are both on the same non-participating form.

MR. MOORE: May Plaintiffs have the same objection, Your Honor, to those two?

THE COURT: Yes, you may. Overrule your objection.

MR. MOORE: Thank you. Note our exception, if the Court please.

(pause)

MR. RAMEY, SR.: We next offer this royalty deed inasmuch as the Plaintiff's motion named specific persons.

(ROYALTY DEED—from B. L. Garrett, and wife, Emma Garrett, to Fred M. Garrett, dated January 5, 1961, filed of record on March 21, 1961, and recorded in Volume 493, Page 572 of the Deed Records of Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 26)

MR. RAMEY, SR.: Royalty deed from B. L. Garrett and wife to Fred M. Garrett, dated January 5, 1961, recorded in Volume 493, page 572, shown on Page 6 of the Richardson and Watkins Abstract Company — abstract number 15126.

We offer this instrument for the purpose of showing what type of instrument it is and for the purpose of showing that it is a non-participating royalty instrument, just as the instruments that we have heretofore introduced are, and that they contain identical provisions as far as the conveyance of purely a royalty interest is concerned.

REPORTER'S NOTE: An instrument was handed to Counsel for the Plaintiffs.

(pause)

MR. MOORE: No objection for the purposes offered for.

THE COURT: All right.

MR. RAMEY, SR.: And we also offer that for general purposes.

* * * * *

(ROYALTY DEED — from Frances Walker McCain to C. S. McCain, Jr. and wife, Cornelia D. McCain, dated May 4, 1961, recorded in Volume 495, Page 527, Deed Records of Henderson County, Texas, filed for record on May 12, 1961, was duly marked as:

DEFENDANT'S EXHIBIT NO. 27)

MR. RAMEY, SR.: We also offer a royalty deed dated May 4, 1961, from Frances Walker McCain to C. S. McCain, Junior — recorded in Volume 495, page 527, Deed Records of Henderson County, Texas—which appears on page 88 of the aforesaid abstract. And it is written on the same form of royalty deed that the other.

(ROYALTY DEED — from H. P. Riley to Edson Petroleum Company, dated April 27, 1961, recorded in Volume 495, page 317, Deed Records of Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 28)

MR. RAMEY, SR.: And we also offer a — a royalty deed from H. P. Riley dated April 27, 1961 — recorded in volume 495, page 317, Deed Records, Henderson County, Texas, in which Edson Petroleum Company is the Grantee.

And it likewise is executed and drafted upon the same form of royalty deed that has been called to the attention of the Court.

CLERK OF THE COURT: What page is that one, Mr. Ramey?

MR. RAMEY, SR.: That is on page 83 of the same abstract.

* * * * *

THE COURT: (interrupting) Counsel has said that he will stipulate with you that these are what you call non-participating royalty deeds and all these people own non-participating royalty.

MR. MOORE: Yes, sir.

THE COURT: Except, of course, the owners of the — I mean — the lessor.

MR. MOORE: Yes, sir.

MR. RAMEY, SR.: Well —

MR. McCLENDON: (interrupting) Now, Judge, that take us down to — Do you want to introduce this with Delta Drilling Company now?

MR. RAMEY, SR.: Yes.

We also introduce the Delta Drilling Company assignment. And that stipulation covers that also.

THE COURT: I thought it covered all of them — all of them except the interest owned by, if any, the McCoys, and the Hiltons and the Meltons — with the Atlantic Refining Company. Is that right?

MR. MOORE: Yes, sir; we are willing to stipulate that they are claiming non-participating royalty interest in — that are the subject of the former deeds that Judge Ramey introduced.

MR. RAMEY, SR: That Delta Drilling Company also owns a non-participating royalty interest in it — in the land in the controversy. Is that stipulated?

THE COURT: I understood that. So, let's get it straight; that the attorneys for the Plaintiffs are willing to stipulate

that all persons listed in Paragraph 2 of their Motion to Remand as being necessary and indispensable parties to this case own, or claim to own, non-participating royalty interest under the lands involved in this case with the exception of W. O. Hilton and wife, L. A. McCoy and wife, J. W. Melton and wife, and The Atlantic Refining Company.

MR. MOORE: Yes, sir.

THE COURT: All right; that takes care of it.

MR. RAMEY, SR.: On the form that — the form of the instruments that have been —

THE COURT: (interrupting) — heretofore introduced in evidence.

MR RAMEY, SR.: (continuing) — heretofore introduced in evidence.

THE COURT: Has there been — Has the lease from the Meltons been introduced in evidence? I notice —

MR. RAMEY, SR.: (interrupting) No, it hasn't, Your Honor.

THE COURT: I know it's included in the unitization agreement.

MR. RAMEY, SR.: We will offer that now.

MR. McCLENDON: Here's the lease, Judge.

REPORTER'S NOTE: An instrument was handed to Mr. Ramey, Sr., Counsel for the Defendant.

(OIL, GAS AND MINERAL LEASE — between J. W. Melton and wife, Virgie Melton, and B. L. Garrett, dated August 5, 1951, filed of record on August 28, 1951 and recorded in Volume 372, page 415, Deed Records of Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 32)

(ASSIGNMENT OF OIL AND GAS LEASE — from B. L. Garrett to E. C. Casey, dated August 6, 1951, filed of record on August 28, 1951, and recorded in Volume 414, at page 372, in the Deed Records of Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 33)

(ASSIGNMENT OF OIL, GAS AND MINERAL LEASE — from E. C. Casey to Atlantic Refining Company, dated August 7, 1951, filed of record on August 28, 1951, and recorded in Volume 373, at page 270 of the Deed Records of Henderson County, Texas, was duly marked as:

DEFENDANT'S EXHIBIT NO. 34)

CLERK OF THE COURT: That will be "D-32" — and the two assignments will be "33" and "34".

MR. RAMEY, SR.: We offer the lease from J. W. Melton to B. L. Garrett, dated the 5th day of August, 1951, recorded in Volume 372, page 415, Deed Records, Henderson County, Texas, being identified by Defendant's Exhibit No. 32.

And we offer the assignment of said lease from B. L. Garrett to E. C. Casey, dated August the 6th, 1951, recorded in Volume 414, page 372, Deed Records, Henderson County, Texas, being identified as — by Defendant's Exhibit 33.

And we offer a — an assignment from E. C. Casey to Atlantic Refining Company, dated August the 7th, 1951,

recorded in Volume 373, page 270, being identified by Defendant's Exhibit —

What is that?

CLERK OF THE COURT: "34".

MR. RAMEY, SR.: (continuing) — 34.

(pause).

Shall we proceed, Your Honor?

THE COURT: Yes. Yes; go ahead.

MR. RAMEY, SR.: Will you come around, Mr. Biard.

REPORTER'S NOTE: Mr. D. J. Biard was duly sworn as a witness.

D. J. BIARD,

having first been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, did testify as follows:

DIRECT EXAMINATION

BY MR. RAMEY, SR.:

"Q. State your name, please, sir.

"A. D. J. Biard.

"Q. Are you commonly referred to as Jack Biard?

"A. Yes, sir.

"Q. Where do you live, Mr. Biard?

"A. I live on Timberlane Street in Tyler.

"Q. How long have you lived here?

"A. Four and one-half years.

"Q. Are you connected with the Atlantic Refining Company?

"A. Yes, sir.

"Q. What is your connection with the Atlantic Refining Company?

"A. I'm the District Landman for the Atlantic Refining Company in the East Texas District.

"Q. Are you in charge of the Tyler Office of the Atlantic Refining Company in that capacity?

"A. In that capacity; yes.

"Q. Are you familiar with the lease that the Atlantic Refining Company has pertaining to the land owned by the Plaintiffs, W. O. Hilton and wife, Malvirin Hilton, and L. A. McCoy and wife, Ila Mae McCoy?

"A. I have read the instrument. I am familiar with it; yes.

"Q. Do you recognize this instrument as being in your files pertaining to that property?

REPORTER'S NOTE: An instrument was handed to the witness.

"A. Yes, sir; this is a portion of the file on that lease.

REPORTER'S NOTE: An instrument was handed to Counsel for the Plaintiffs.

(pause)

* * * * *

THE COURT: Well, now, I have no intention — I hope nobody understood that I was trying this case on its merits. I was only going in far enough to the point where the Court could determine who were indispensable parties; and the Court have all held that is not the point to determine indispensable parties.

MR. RAMEY, SR.: I'm aware of that.

THE COURT: And I see no need for trying the case on its merits until I decide the question of indispensable parties. And I can't see where this has any bearing on that question.

MR. RAMEY, SR.: Well —

THE COURT: (interrupting) You are trying to prove that the lease is valid. He is —

MR. RAMEY, SR.: (interrupting) Well —

THE COURT: (interrupting) if you take his pleadings — I — I assume, it, as, and if ever I get to the point where I can ask the parties about — when we get down to it — I assume he is going to contend that you don't have a valid lease on the east eighty acres there, and, therefore, you had no right to put it in the unit.

He is seeking to cancel the Declaration of Unit, is what he is seeking, by his pleadings.

MR. RAMEY, SR.: Well, he is seeking by these pleadings to attack the validity of the lease; and we want to show that the lease is in force.

THE COURT: Now, you certainly would have that right on the trial on the merits; but the Court can't try this case on the merits and then look back to see who should be indispensable parties.

Certainly, nobody can be heard in this case if the Court finds for you. These parties wouldn't have to be here. But the courts have said that's not the test. We've got to assume that he might win his lawsuit and determine the question of indispensable parties.

MR. RAMEY, SR.: I was going to get to that. But I thought that in view of these royalty deeds that they were — were, by the expressed terms, dependent upon the continuation of the lease in effect.

THE COURT: Well, the lease is in effect. You have already proven that. You've got a producing well on it, which will hold it as long as that well produces — if I read the royalty deeds correctly. It would hold the royalty.

MR. RAMEY, SR.: Well, I — I think you are — the Court is correct in that. I was just going to try to —

THE COURT: (interrupting) Well, what I'm saying is that, regardless, the Court cannot at this stage decide whether the lease is valid or whether it is void.

MR. RAMEY, SR.: Well, we —

THE COURT: (interrupting) I'm just trying to see how the parties are cast and what the issues are going to be, to see whether it is a case in which I can grant the relief without affecting somebody that is not before this Court. And I must assume, for that purpose, that he would win his lawsuit and would be entitled to relief.

MR. RAMEY, SR.: Yes.

THE COURT: And that's —

MR. RAMEY, SR.: Yes, that's — (interrupting)

THE COURT: (continuing) — I would think we have gone far enough. I don't see where this has anything to do with that point.

It certainly could well have a bearing on the merits. I can well see that — if we reach the merits.

MR. RAMEY, SR.: Well, I —

THE COURT: (interrupting) Well, we are just going to have to try it all over again if the Court decides that I can keep the case here. If the Court decides that I can keep the case here, we will just have to try it all over again.

If there is anything else you think you need to do, Judge Ramey to — to see who the indispensable parties are in this case—

MR. RAMEY, SR.: (interrupting) Yes, I do — by this witness.

THE COURT: All right.

BY MR. RAMEY, SR.:

"Q. Is the land that is—Plaintiff's land, as we have described it by Mr.—in this plat (indicating) as being described by Mr. Daugherty—and the Melton tract—are they situated in what is known as the Fairway Field?

"A. Yes, sir.

"Q. Of Henderson County, Texas?

"A. Yes, sir.

"Q. They are?

"A. Yes.

"Q. Is that in an—in an established producing oil producing area?

"A. Yes, sir; it is.

"Q. Are there producing wells all around those tracts of land?

"A. Yes, sir; there are producing wells completely surrounding the unit.

"Q. The unit—What do you mean by "the unit"?

"A. The parcel of land—That one hundred and sixty-acre parcel of land that is described in the Declaration of Unit for the Melton unit, which has heretofore been introduced in evidence.

"Q. What land—What leases do they comprise?

"A. There were two leases recited in and pooled by the Declaration of Unit: one was the Melton Lease—eighty acres out of the Melton Lease — and the other lease was the W. O. Hilton, et al, Lease — eighty acres out of that lease.

"Q. Are all of the lands adjacent to the Melton Lease and the Hilton Lease already unitized?

"A. Yes, sir; they are completely unitized.

"Q. Are there any other lands in that area, or the immediate vicinity, that have not been unitized or pooled?

"A. No, sir; there is no such land.

"Q. What do you—

I have introduced the Railroad Commission orders for unitization in that field. What do you—Do you understand that the units prescribed by the Railroad Commission are a minimum of eighty acres and a maximum of one hundred and sixty acres in that field?

"A. Yes, sir.

MR. RAMEY, SR.: May I confer with Counsel?

THE COURT: All right.

I don't know whether it's come out yet or not.

I assume that that well producing on the unit in question is producing from the James Lime—

THE WITNESS: (interrupting) Yes, sir.

THE COURT: (continuing) —formation?

THE WITNESS: Yes, sir.

REPORTER'S NOTE: Counsel here conferred out of the hearing of the Court Reporter.

MR. RAMEY, SR.: It is stipulated between counsel that the permissible allowable under the rules and regulations of the Railroad Commission is two hundred and twenty-two barrels per day for eighty acres and fifty percent more, or a total of three hundred and thirty-three barrels, per day for one hundred and sixty acres.

MR. MOORE: That's my understanding of the rule. Mr. Biard probably knows better than I do.

THE COURT: Eight days a month?

MR. MOORE: Yes, sir.

THE WITNESS: Yes, sir.

THE COURT: They are under the eight-day-a-month rule?

MR. MOORE: Yes, sir.

* * * * *

MR. RAMEY, SR.: That's all.

CROSS-EXAMINATION

BY MR. MOORE:

* * * * *

BY MR. MOORE:

"Q. Now, as far as the geology of the areas goes—say that the land were not released for ten years—wouldn't they lose a part of the royalty that they are entitled to over that ten years?

"A. The non-participating royalty owners?

"Q. Yes, sir.

If the lease is cancelled. Aren't they going to be drained?

"A. It's—Well—

MR. RAMEY, SR.: That's—

"A. (continuing) Yes, sir; it will be drained.

MR. RAMEY, SR.: We object to that. That's a conclusion of—

THE COURT: Well, I think he's entitled to ask him for conclusions too; because you asked him about a situation—if he—if they would be hurt—and he said no.

Overrule your objection.

Go on.

"A. (continuing) The tract itself, insofar as it was not in a producing unit, nor did it have a well on it, would almost certainly be drained.

BY MR. MOORE:

"Q. Then that is a way in which probably those non-participating royalty owners could be injured; isn't it—if the lease is cancelled?

"A. The thing that's going through my mind here, if you will permit me to say it, is that I have some question as to whether non-participating royalty owners have what you refer to as a right to demand and secure development. And to that extent, I don't know—

"Q. Well—

"A. (interrupting) Surely the mineral owners would be drained.

"Q. I'm not asking you about their right to demand development.

The situation as it is now, as I understand it, is that they have a royalty interest in a producing unit—and as long as that lease is vaild they are supposed to be able to collect so much money every month.

"A. They have been—

"Q. (interrupting) Now, if their lease is declared invalid, they are not going to collect that money; are they, sir?

"A. Well, the lease under which they claim under—

No, no; they would not be entitled to collect the money, or, at least—

Well, now, wait.

(pause)

Some of them have ratified the—the Hilton Lease, of course.

"Q. Yes, sir; but if they have an interest under this eighty acres right here (indicating), and your lease is cancelled, and all you've got is the eighty acres over here (indicating) to get an allowable on, how are you going to pay these people over here (indicating) any royalty?

"A. Well, that's a question of law as to whether or not they would be overloaded or not. It's possible that —

"Q. (interrupting) Well, would you want to pay them a royalty if they didn't own any interest under this?

"A. There is no economic incentive for paying them royalty, but it is possible that you would be obligated to do it by virtue of the arrangements entered into with them.

"Q. Then, if they are —

"A. (interrupting) I leave that —

"Q. (continuing) — going to collect it — if they are not entitled to collect it, they are going to be entitled to collect it under some kind of contract — and you said they ratified this — but, still, isn't their interest going to be reduced because it's only going to be producing on an eighty acre allowable instead of a hundred and sixty acre allowable?

You have eighty acres revolving interest over here now (indicating). Now, if you put some more in here you are going to reduce everyone; aren't you?

"A. They are spread out, so to speak, under the unit.

(pause)

Of course, in addition to their rights — whether or not they exist with respect to the Melton unit by virtue of contract, they still have, presumably, rights under — in and to the production that may be secured from the so-called Hilton tract over here (indicating).

"Q. Yes, sir; but if — if — if there is no longer any production coming from the Hilton tract — if you don't have a lease on this, you certainly can't pay — you can't from an economic standpoint pay these royalty owners royalties in addition to the royalty you are paying over here (indicating); can you?

"A. Probably could afford it; but it would be a drain, of course.

"Q. You wouldn't want to; would you?

"A. I wouldn't do it voluntarily.

MR. MOORE: Your Honor, I think that's all. I don't want to argue with the witness.

REDIRECT EXAMINATION

BY MR. RAMEY, SR.:

"Q. If those — If this lease is in the proven area would its — would that lease, if it — if the Plaintiffs prevail in this lawsuit — have a market demand?

"A: There would be a tremendous interest in — on behalf of oil operators — oil companies to secure a lease on the tract and drill it; yes, sir.

"Q. What would you say would be the market value of this eighty acres of the Hilton tract if it were —

THE COURT: (interrupting) Well, now, the royalty owners wouldn't get any of that.

MR. RAMEY, SR.: No, they —

THE COURT: (interrupting) They are all non-participating.

MR. RAMEY, SR.: I'm — I'm asking this question to show that there is not any likelihood of there not being any development for — during the next ten years if — if this lease was cancelled, Your Honor; that there would be a great incentive for the Hiltons and McCoys to lease the land.

But Counsel's interrogation indicated — it was predicated on the assumption that they would just sit back and not lease their land during the next ten years duration of these term royalty conveyances.

"A. Naturally, I would have to guess — I would have to guess at something like that because the situation has not confronted me; but I would imagine that something like that would command a price of — lease bonus price of in excess of a thousand dollars an acre. That's my personal opinion.

BY MR. RAMEY, SR.:

"Q. You deal with those matters every day in your — in your capacity; don't you?

"A. Yes, sir.

MR. RAMEY, SR.: That's all.

THE COURT: How long has that well been in there on that lease?

THE WITNESS: This well was completed on June 20, 1961, and commenced producing, I think, on the 25th of June, 1961.

THE COURT: It's been producing ever since?

THE WITNESS: Yes, sir.

THE COURT: Full allowable?

THE WITNESS: Yes, sir.

THE COURT: Have the royalty owners holding royalty under the Hilton eighty-acre tract been paid their royalty?

THE WITNESS: They have been tendered division orders. I do not know whether they have all signed returns. In fact, I think there have been some that have not signed returns. returns.

THE COURT: You wouldn't think that the Atlantic would pay them if this lease was cancelled, would you?

THE WITNESS: No, sir. That would be a question —

THE COURT: — wouldn't be obligated to?

THE WITNESS: I should hope not.

MR. RAMEY, SR.: I would —

THE COURT: (interrupting) Of course, there is no well on the Hilton eighty-acre tract? at this time?

THE WITNESS: No, sir.

THE COURT: All right.

MR. MOORE: Your Honor, I have just one or two further questions of the witness.

RECROSS-EXAMINATION

BY MR. MOORE:

"Q. Mr. Biard, are there present plans to have a field-wide unit in the James Lime formation down there?

"A. Leaseholders have held a series of meetings — the object of which, and hope and intent of which, is to create a field-wide unit for the James Lime formation; yes, sir.

"Q. Don't they hope to have that done in the next two or three years?

"A. That is my definite impression; yes, sir.

"Q. All right.

Now, when that field-wide unit is formed what is going to be the position of a man with a tract of land if it's not leased down there — inside the field-wide unit?

"A. A mineral owner would be an operator in that case.

"Q. All right.

Well, won't — isn't there then a very great likelihood that someone might prefer not to lease that eighty-acre tract and save it until the field-wide unit is formed — and command a much, much, much higher price than maybe a thousand dollars for it?

(pause)

"A. The mechanics of the formula under which allowables will be prorated among the tracts has not been agreed upon by either the operators or the royalty owners, nor have the mechanics of admitting tracts to the unit upon which no well has been drilled.

Those — Those things simply have not been negotiated as yet.

"Q. Well, hasn't it been your experience in other areas that when a field-wide unit is formed someone that is in the middle of the unit with an unleased tract of land is in a rather commanding position?

"A. I'd say —

"Q. (interrupting) If he wants to join the unit?

"A. I really — I don't recall having seen that situation where you have a tract of land upon which no fraction of the mineral interest was leased.

"Q. Well —

"A. (interrupting) It's just a novel situation.

"Q. All right; don't you think it's reasonable to suppose that someone might hold it two or three years just hoping it might be worth lots more — especially if they didn't have any — any royalty interest in it?

Say, for instance, that the person that owns the lease right on this thing doesn't have but one or two acres of that eighty of royalty interest. All he can do is hold it and try to get a big bonus for it some day — or get a —

I mean, he can't — he's — his interests are absolutely adverse to a man who has a lot of non-participating royalty down there — trying to lease this land or try to hold it and try to go into a field-wide unit —

MR. RAMEY, SR.: (interrupting) That calls for a question of law, Your Honor.

THE COURT: Yes; I will —

MR. MOORE: (interrupting) Yes.

All right; I will withdraw the question, Your Honor.

That's all.

THE COURT: Judge, you mentioned a regulation that has not been introduced in evidence here — of wells completed as of May of this year. I believe you had —

MR. RAMEY, SR.: (interrupting) I was going into that, Your Honor, if you hadn't objected to my —

THE COURT: (interrupting) Now, Mr. Ramey, I made no objection to what you said about that; and I don't want that insinuation. Because if there is a change in the regulations, that is material on whether or not they would be hurt —and I haven't tried to stop you one minute to prove anything here that would bear on the issue.

My question of a while ago was directed at whether the line of testimony you were going to proceed — whether it bore on the issue — and it was solely on the merits.

MR. RAMEY, SR.: Your Honor, didn't let me finish my sentence. I was going to say that you objected to my going into the matter that you did object to —

THE COURT: (interrupting) On payment of the rentals — delay rentals. That's — That's the only thing I brought up; that was brought up.

REDIRECT EXAMINATION

BY MR. RAMEY, SR.:

"Q. Do you have your records about when this well was commenced on the Melton tract, Mr. —

"A. I have some notes in the courtroom here upon which I have noted those dates; yes, sir.

REPORTER'S NOTE: Instruments were handed to the witness.

"A. Shall I refer to them?

MR. RAMEY, SR.: With the Court permission?

THE COURT: Go ahead.

I asked him when the well was completed, and he gave that answer a while ago.

THE WITNESS: I know the date. I —

MR. RAMEY, SR.: (interrupting) He's got it, Your Honor.

THE COURT: All right. He didn't tell me he guessed at it. I didn't ask him he was guessing.

THE WITNESS: No; I wasn't guessing. I have it written —

THE COURT: (interrupting) All right; tell me again.

It was June something; wasn't it?

THE WITNESS: Yes, sir; it was completed in June; yes, sir.

The well was spudded on April 30, 1961 — completed on June 8, 1961.

MR. RAMEY, SR.: June 8th is the date he didn't say.

THE WITNESS: And the connection date was June 20th. And the first run was June 25th.

* * * * *

THE COURT: Does the Plaintiff still want to urge his Motion to Dismiss?

MR. MOORE: No, sir.; with leave of the Court, we would like to withdraw our Motion to Dismiss at this time.

THE COURT: All right.

All right; does the Plaintiff have any further evidence on the matter before the Court now — on the Motion to Remand? Really, it's a question of who are indispensable parties, if any, in the case.

MR. MOORE: No, sir; the Plaintiffs rest.

THE COURT: All right; I will hear from you gentlemen then. I will hear from the Plaintiff first.

* * * * *

MR. MOORE: Your Honor, it is the Plaintiffs' position in this case simply that this is a suit to cancel the declaration of unit. If the declaration of unit falls, of course the lease falls — being a lease with a ten-year primary term and being dated in August — August the 5th, 1951. The lease is no longer in effect if the declaration of unit is no good.

THE COURT: Of course, then your basic contention that the declaration is no good is that the lease never covered this property from the start. Is that it?

* * * * *

MR. MOORE: Yes, sir; that's correct.

THE COURT: All right.

* * * * *

REPORTER'S NOTE: The Court then, at 5:20 o'clock, p.m., June 26, 1962, recessed until 10:00 o'clock, a.m., June 27, 1962, at which time it reconvened.

* * * * *

THE COURT: So, under the peculiar facts of this case, I am going to hold, and do so hold and conclude, that the royalty owners under the Hilton tract and the royalty owners under the Melton tract are not indispensable parties.

Therefore, the Plaintiff's Motion to Remand this case to a State court will be overruled; and the attorneys for the Defendant will prepare and present an appropriate form of order to that effect.

* * * * *

THE COURT: Gentlemen, I am going to set the pre-trial hearing on this case for July the 26th at 10:00 o'clock, a.m.

Now, that will be in accordance with the usual order that is sent out; but you can get a copy from the Clerk — which requires the attorneys to confer and attempt and to make such stipulations as they can — and be here with an attempt to have an agreed pre-trial order. If you can't, why, each one will have their own order prepared.

So you've got plenty of time to do that between now and July the 26th, if I'm looking — Wait a minute. Let me see if I'm looking at the right week.

(pause)

Yes, that's Thursday, July 26th. I should be through with the criminal case I have set for trial for Monday of that week by Thursday.

All right, Gentlemen, the Court stands recessed.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

OFFICIAL REPORTER'S CERTIFICATE

I, David M. Seyffert, Official Court Reporter for the District Court of the United States for the Eastern District of Texas, do hereby certify that the above and foregoing 235 pages of typewriting constitute a true, correct and complete transcript of the hearing held on Plaintiffs' Motion to Remand in the above-styled and numbered civil cause.

WITNESS my official signature in the City of Tyler, Texas, this *20th* day of *December, 1962.*

David M. Seyffert
Official Court Reporter
United States District Court
Eastern District of Texas

CERTIFICATE OF SERVICE

This certifies that copies of this Appendix have been served upon counsel of record for Petitioners by enclosing copies in sealed envelopes and depositing same in the United States Post Office at Dallas, Texas, with first-class postage prepaid and sent by Certified mail, and addressed to counsel of record at their post office addresses as follows:

Jack W. Flock,
Tom B. Ramey, Jr.,
Frank L. McClendon
Citizens First National Bank
Building
P. O. Box 629
Tyler, Texas 75701

Dated this 13th day of September, 1969.

Edward Kliewer, Jr.

Edward Kliewer, Jr.
Attorney for Respondents